

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
+ + + + +
MEETING

IN THE MATTER OF:

MPAC, LLC	
t/a The Scene	Show Cause
2221 Adams Place, NE	Hearing
Retailer CX	(Status)
License No. 78642	
Case No. 14-251-00133	
Failure to comply	

October 29, 2014

The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Chairman Ruthanne Miller, presiding.

PRESENT

RUTHANNE MILLER, Chairperson
NICK ALBERTI, Member
MICHAEL SILVERSTEIN, Member
HECTOR RODRIGUEZ, Member

ALSO PRESENT:

WALTER ADAMS, Assistant Attorney General, OAG

P-R-O-C-E-E-D-I-N-G-S

(10:18 a.m.)

CHAIR MILLER: Okay, the next case I'm going to call is The Scene, Case Number 14-251-00133 located at 2221 Adams Place, Northeast, License Number 78642 in ANC 5C.

MR. ADAMS: Good morning --

CHAIR MILLER: Good morning.

MR. ADAMS: -- members of the Board. I'm Walter Adams, I represent the District of Columbia. Please pardon me for the delay.

CHAIR MILLER: No problem. Okay.

MR. BLAKENEY: Good morning, Willie Blakeney for The Scene.

CHAIR MILLER: All right. I'm just going to ask you this, it's a regular question, did you get notice of this hearing? I know you did because you were here last week when we talked about it, but would you put on the record that --

MR. BLAKENEY: Yes.

1 CHAIR MILLER: -- you did get
2 notice?

3 MR. BLAKENEY: Yes, I did.

4 CHAIR MILLER: And you read and
5 understood it and there's no notice issue?

6 MR. BLAKENEY: Yes.

7 CHAIR MILLER: Okay. All right,
8 so is there a preliminary matter you want to
9 bring to our attention?

10 MR. ADAMS: Yes, Madam Chairman.

11 CHAIR MILLER: Okay.

12 MR. ADAMS: The Parties do have
13 preliminary matter to be brought to the
14 Board's attention. The Parties have
15 discussed an Offer-In-Compromise.

16 We reduced the terms since your
17 writing, with the Board's indulgence I can
18 provide that agreement to the Board?

19 CHAIR MILLER: Great, that would
20 be very helpful.

21 MR. ADAMS: All right. Madam
22 Chairman, for this case, again, there are,

1 it's scheduled for show cause for next week is
2 a, the two charges are for the establishment
3 not, failing to follow their settlement
4 agreements or security plan and that they
5 allowed the law for disorderly, or allowed the
6 establishment to be used for unlawful or
7 disorderly purpose.

8 With the Board's indulgence I can
9 go through the terms?

10 CHAIR MILLER: Okay.

11 MR. ADAMS: Do the terms, all
12 right.

13 CHAIR MILLER: Yes.

14 MR. ADAMS: As written here the
15 establishment has agreed to pay a fine of
16 \$3,000 to be paid within a 150 days with
17 \$1,500 fine for each charge. And if they fail
18 to pay within 120 days the establishment has
19 agreed that the license will be suspended.

20 The second provision is that the
21 establishment will pay a resolve or any
22 outstanding detail fee, any outstanding

1 reimbursable detail fees with the Metropolitan
2 Police Department prior to the suspension
3 being lifted.

4 The third term is that the
5 establishment enters into a new enforceable
6 agreement memorandum with MPD regarding the
7 provision of the reimbursable detail or
8 acknowledgment that the current agreement
9 signed by Mr. Willie Blakeney III is
10 effective.

11 The fourth provision has, the
12 establishment must use a reimbursable detail
13 whenever it has live entertainment, or in
14 parenthetical's, a musical performance, with
15 the exception of performance of jazz bands.
16 There is a footnote for that.

17 The is defined here as Jazz being
18 the type of music of Black American origin
19 characterized by improvisation, syncopation
20 and usually irregular or forcible rhythm
21 emerging at the beginning of the 20th century.
22 Brass and woodwind instruments and piano are

1 particularly associated with jazz although
2 guitar and occasionally violin are also used.

3 Styles include Dixieland, swing,
4 bebop, free jazz and smooth jazz. This is
5 taken from the Oxford Dictionary of American
6 English.

7 The genre that we're, the genre is
8 consistent with that recognized as jazz by the
9 National Academy of Recording Arts and
10 Sciences. This is their, that is an
11 organization that issues Grammy Awards or
12 deals with such things as Grammy awards thus
13 has recognized categorizations.

14 The fifth term is that the
15 establishment pass completion of formal
16 training classes for all security personnel
17 within 30 days. That there's also completion
18 of formal training class for any newly hired
19 security personnel with 30 days of their
20 hiring date.

21 And lastly, provision Number 7, is
22 that the establishment agrees that all

1 security personnel shall be required to be
2 familiar with and review the establishments
3 security plan. And those are the terms of the
4 proposed Offer-In-Compromise.

5 CHAIR MILLER: Okay, are there
6 questions? Yes, Mr. Alberti?

7 MEMBER ALBERTI: Mr. Blakeney, how
8 often and when, you know, sort of, what is,
9 how often and how routinely do you have what
10 you refer to as jazz performances?

11 MR. BLAKENEY: It would vary.
12 Must of the time it's on a Saturday either
13 during the day or late evening.

14 MEMBER ALBERTI: And how late do
15 jazz --

16 MR. BLAKENEY: I would say --

17 MEMBER ALBERTI: -- performances
18 go?

19 MR. BLAKENEY: How late?

20 MEMBER ALBERTI: Yes.

21 MR. BLAKENEY: Maybe 2:00 a.m.

22 MEMBER ALBERTI: How often? I

1 mean you must have some idea --

2 MR. BLAKENEY: Approximately twice
3 a week.

4 MEMBER ALBERTI: Twice a week?

5 MR. BLAKENEY: Yes, sir.

6 MEMBER ALBERTI: And how large are
7 the ensembles?

8 MR. BLAKENEY: It probably vary,
9 depending on the artist. Anywhere from 75 to
10 200.

11 MEMBER ALBERTI: Oh, okay, that
12 was my next question, the crowd. The ensemble
13 for the band?

14 MR. BLAKENEY: How large is the
15 ensemble?

16 MEMBER ALBERTI: Yes.

17 MR. BLAKENEY: It can vary from a
18 trio to possible a six-piece.

19 MEMBER ALBERTI: But you said the
20 crowd could be as large as 200?

21 MR. BLAKENEY: Yes, depending on
22 who the artist is.

1 MEMBER ALBERTI: Right.

2 MR. BLAKENEY: Yes.

3 MEMBER ALBERTI: So my question
4 is, why did you in here just stipulate the
5 size of a crowd for --

6 MR. BLAKENEY: Why did?

7 MEMBER ALBERTI: We have a vague
8 term, jazz, and, you know, I mean I talked
9 about this at the last hearing and I find it
10 very vague. Unenforceable term. It's open to
11 interpretation.

12 That is the problem I'm having
13 with it, so I was wondering why the solution
14 was, well when you have more than X number of
15 people you're going to have reimbursable
16 detail. I mean that seems to me to solve the
17 problem because now, you know, reimbursable
18 detail is expensive, you don't want to have it
19 when you have 50 people in the club, I
20 understand.

21 MR. BLAKENEY: Exactly.

22 MEMBER ALBERTI: But if you have a

1 larger crowd then you can afford it. So --

2 MR. BLAKENEY: Majority of the
3 time.

4 MEMBER ALBERTI: -- it seems a
5 number of patrons is a better kind of trigger
6 here to me. But that's not part of this
7 Offer-In-Compromise, I'm just putting that out
8 there.

9 MR. BLAKENEY: Yes, you have to
10 base that on ticket sales. And majority of
11 the time you do not get full capacity numbers
12 based on advanced ticket sales. Sometimes --

13 MEMBER ALBERTI: Yes, but don't
14 you generally know --

15 MR. BLAKENEY: No, you --

16 MEMBER ALBERTI: In business you
17 generally know --

18 MR. BLAKENEY: I mean you don't
19 know. Depends on what else is going on in the
20 city. Maybe there is someone that's a little
21 more popular than who I have.

22 MEMBER ALBERTI: So you could have

1 500 people in the club for a jazz performance,
2 right?

3 MR. BLAKENEY: Depending on what
4 else is going on or --

5 MEMBER ALBERTI: You could have a
6 thousand people in your club for a jazz
7 performance, is that correct?

8 MR. BLAKENEY: If there is nothing
9 else going on and this musician is pretty
10 popular and --

11 MEMBER ALBERTI: So now you're
12 getting to my concern. You got a thousand
13 people in your club and there's no
14 reimbursable, a thousand people coming to that
15 spot and there's no reimbursable detail.

16 You just put your finger on my
17 concern. I'm just putting that out there for
18 everyone.

19 MR. MAYNARD: Mr. Blakeney, I just
20 want to follow up on that. Is the reason that
21 you, I don't want to put words in your mouth,
22 but is the reason that you singled out jazz

1 for not have reimbursable detail because it
2 may attract a different kind of a crowd --

3 MR. BLAKENEY: Yes.

4 CHAIR MILLER: -- that doesn't
5 cause problems?

6 MR. BLAKENEY: Generally traffic
7 30 and over crowd. And there are people who
8 normally come dressed in, to see the
9 performance. There's no dancing, it's more of
10 a dinner/concert.

11 MR. ADAMS: If I --

12 CHAIR MILLER: Yes, go ahead.

13 MR. ADAMS: -- maybe heard? More
14 or less the establishment had represented to
15 a, there been discussion about this issue
16 regarding jazz as being exception to the
17 reimbursable detail as mentioned by, it was in
18 a context of the establishment apparently, you
19 know, has comedy nights in which the jazz has
20 done preview performances.

21 Since there was some question
22 about it from last week, well the part of it

1 was addressing this, not so much in terms,
2 well in part with the definition. And I
3 understand that there may have been concern,
4 I guess, in terms of vagueness.

5 However, you know, there is that,
6 you know, I guess it's that sense from the
7 former justice parts there was like, you know,
8 I know, saying you want to see, I guess in
9 this terms would be, and I know jazz when I
10 see it.

11 So part of it was at least saying,
12 well this is at least tying it with a category
13 that's already been recognized by, I guess a
14 music, a nationally recognized music
15 organization to at least be able, so at least
16 to somehow try to address it while not leaving
17 open a loophole. But, yes.

18 So I just at least wanted to at
19 least provide what the District's thinking was
20 in terms of trying to provide some specificity
21 so that, you know, therefore if an
22 investigator or MPD finds that something

1 otherwise is occurring, then they can, you
2 know, they can write it up as a violation.

3 CHAIR MILLER: I have a question
4 on Number 3 about the agreement memorandum
5 with MPD. I mean does that, I mean we don't
6 see the terms of that, so does that affect,
7 you know, when the size is expected to be a
8 certain amount?

9 You know, when there's supposed to
10 be a certain number of people than they would
11 have RDO in certain numbers or can you just
12 address that briefly?

13 MR. ADAMS: To my knowledge it,
14 and my recollection, I do not have in front of
15 me. No, what this was is an agreement for all
16 establishments with MPD in terms of just the
17 procurement of, as a blanket agreement for the
18 terms by which they procure a reimbursable
19 detail.

20 So the reason this was here was
21 that there, at the summer suspension hearing
22 there was some debate about whether or not the

1 establishment recognized such an agreement
2 being in existence.

3 So more or less this is to say,
4 well we do recognize that whatever's already
5 been signed with the police department, you
6 know, we have to agree and follow those terms.
7 That there's not any ambiguity. It's to
8 address that, the past ambiguity.

9 But it doesn't state anything, to
10 my recollection, regarding capacity or size of
11 crowds. Or anything else.

12 CHAIR MILLER: I just was under
13 the impression, and I haven't seen these so I
14 don't really know for sure that when there's
15 an agreement between an establishment and MPD
16 it's, MPD kind of makes an assessment as to
17 how many RDO they need or?

18 MEMBER ALBERTI: Mr. Adams, is
19 this the agreement that talks about how, how
20 much in advance they have to have to request
21 RDO, when payment is due?

22 MR. ADAMS: Yes.

1 MEMBER ALBERTI: It has to, it's
2 just that general agreement that doesn't talk
3 about numbers of RDO it talks about when you
4 will request it, when payment will be received
5 and what MPD's rights are in refusal in not
6 providing it?

7 MR. ADAMS: That is correct.

8 MEMBER ALBERTI: Okay.

9 MR. ADAMS: It's a general term in
10 terms that it applies to all establishments
11 that have reimbursable details.

12 MEMBER ALBERTI: We've seen that
13 here before.

14 CHAIR MILLER: That we did.

15 MR. ADAMS: Right.

16 CHAIR MILLER: Yes.

17 MR. ADAMS: And the securities
18 plan with this establishment states that the
19 establishment is required, in terms of
20 coordinating the number detail and in
21 coordinating with the, that they must
22 coordinate with the Fifth District in terms of

1 the amount of detail that must be assigned for
2 any particular, for, you know, any particular
3 events.

4 CHAIR MILLER: Where are --

5 MR. ADAMS: That --

6 CHAIR MILLER: What are you
7 referring to?

8 MR. ADAMS: The establishment
9 security plan.

10 CHAIR MILLER: Okay. Okay, that's
11 where it is.

12 MR. ADAMS: Right.

13 CHAIR MILLER: Okay.

14 MR. ADAMS: It's in there where,
15 there's no specific number that's in place,
16 but it does state that, it does talk, speak to
17 the concern of coordination with the District
18 in terms of the investigator, requires there
19 to be a coordination with the District in that
20 regards.

21 And I can specifically turn the
22 establishment, well to Page 3 of it in which

1 they, the establishment, well it says has a
2 great rapport with the Fifth District and
3 could be commended for recommendations for
4 obtaining a reimbursable detail in number
5 officers for some scheduled events that will
6 consult with the MPD commander on a regular
7 basis. I can go --

8 CHAIR MILLER: Okay.

9 MR. ADAMS: I can look further and
10 see if there's anything else there that talks
11 about that, but there is, expected that Fifth
12 District can set the requirement for the
13 number of reimbursable details officers.

14 CHAIR MILLER: Okay, thank you. I
15 also want to ask mister --

16 MR. ADAMS: Yes, actually that's
17 also on Page 6 --

18 CHAIR MILLER: Okay.

19 MR. ADAMS: -- where there's, it
20 says do's and don'ts. On Number 8 it states
21 The Scene will consult with the Fifth District
22 MPD commander for recommended number of

1 officers working the reimbursable detail on
2 scheduled events of concern.

3 MR. BLAKENEY: It's normal that
4 our schedule of events, we forward to the
5 commander and recommend how many officers
6 would they like to have for the reimbursable
7 detail. I'll give them a guesstimated
8 capacity of the estimated crowd. You know,
9 I'll get them the low, we could expect 75 to
10 200. And based on those numbers I'll let them
11 recommend how many officers.

12 CHAIR MILLER: So what's your
13 history with respect to how large a crowd you
14 get for the jazz?

15 MR. BLAKENEY: Excuse me?

16 CHAIR MILLER: What's your history
17 with respect to how large a crowd you get for
18 the jazz performances?

19 MR. BLAKENEY: I have had, the
20 largest crowd that I have had is approximately
21 400. And that was for Maysa who is a known
22 jazz artist out of Baltimore.

1 And during that time I think we
2 had approximately six officers that were
3 assigned for the reimbursable detail.

4 CHAIR MILLER: So you did, but Mr.
5 Alberti's concern is that according to this,
6 the agreement, you wouldn't have to because
7 it's exempting jazz performances.

8 Now would you, in instances like
9 that, still be sending information to MPD even
10 though it's jazz and MPD could say --

11 MR. BLAKENEY: I would still
12 forward the schedule of events to MPD.

13 CHAIR MILLER: Okay, so if you had
14 400 people expected, would you employee RDO or
15 even if you weren't required by this?

16 MR. BLAKENEY: Can you repeat
17 that?

18 CHAIR MILLER: If you had a crowd
19 of 400, which is large, larger than normal --

20 MR. BLAKENEY: Okay.

21 CHAIR MILLER: -- and you
22 forwarded it to MPD and they said you should

1 have RDO, would you?

2 MR. BLAKENEY: Oh, yes. If they
3 recommend, yes, I would.

4 CHAIR MILLER: Okay. Any other
5 questions? I just want to ask one more
6 question. Just on this same issue to Mr.
7 Adams.

8 I mean I don't think you would be
9 recommended this OIC if you had any concerns
10 about this jazz question, but if you have any
11 other final comments why it's okay to exempt
12 it from --

13 MR. ADAMS: Well I mean the only
14 comment that I can really provide for the
15 Board, I mean honestly there's relevant
16 things, issue to balance. Obviously, you
17 know, the establishment is already required to
18 work with the Fifth District in terms of the
19 coordination of details.

20 The other issue that I think we
21 can stay on the record, we have never had any
22 other incidents where, essentially the only

1 time that we've had instance is when there's
2 been live bands that have performed other than
3 jazz. And frankly it's usually been the, well
4 it's always been the Go-go performances.

5 So more or less the reason that
6 when this came up or when this proposal came
7 in place, the idea is that, you know, with
8 there being a, if there is a blanket
9 requirement for a detail for live
10 entertainment, obviously it would impact
11 situations where like if there is a comedy
12 performance. And Mr. Blakeney has stated that
13 there is, you know, the musical accompanied
14 with a comedy performance and it could have,
15 how can I say it, a more drastic impact then
16 necessary.

17 So again, what we try to do, since
18 we haven't had problems with them in the past,
19 and to address any issues so that we try to
20 ensure that there's at least a genre
21 specification to allow there to be some
22 enforcement.

1 But again, ultimately it's still,
2 the security plan is in effect, which requires
3 there to be a coordination with the District.
4 And if there is that coordination, hopefully
5 there wouldn't be any problems that we've had
6 in the past.

7 CHAIR MILLER: Okay, I just want
8 to make sure I understood you correctly. That
9 if the jazz is combined with something else
10 the exception doesn't apply? Like if it's
11 combined with a comedy show or something like
12 that. Is that correct?

13 MR. ADAMS: Well, yes. That's
14 what, we didn't want there to be any problems
15 where this would come into a fact where, you
16 know, if they had a comedy show and they had
17 a jazz accompanying, that it wouldn't be, it
18 wouldn't be called a violation of this
19 agreement or the license. So yes, that's what
20 we wanted to ensure.

21 CHAIR MILLER: You're adding to
22 it, I'm sorry. So if it's combined with a

1 comedy show, does that mean they have to get
2 reimbursable detail then or no?

3 MR. ADAMS: Well what we're
4 trying, the reason that we have the exception
5 is to make sure that it wouldn't, that they
6 would not have to have --

7 CHAIR MILLER: They would not?

8 MR. ADAMS: -- reimbursable detail
9 --

10 CHAIR MILLER: Okay.

11 MR. ADAMS: - for those types of
12 situations.

13 CHAIR MILLER: Okay.

14 MR. ADAMS: And I guess
15 independently if he were to, if the
16 establishment were to have other performances,
17 you know, again, the idea is that they have,
18 we have not had that problem to date and so
19 hopefully, you know, that, you know again,
20 along with coordination with the Fifth
21 District, that it would address the safety
22 concerns that we've had in the past.

1 CHAIR MILLER: Okay, thank you.

2 All right --

3 MEMBER ALBERTI: Ms. Chairman?

4 CHAIR MILLER: Yes.

5 MEMBER ALBERTI: In fairness to
6 the Licensee, I just want to make sure, I want
7 to clarify this Item 4 because the way it's
8 written it's not quite, I think what you're
9 trying to convey in Item 4 is that if it's
10 live musical entertainment?

11 MR. ADAMS: Yes.

12 MEMBER ALBERTI: Because it says,
13 or musical performance. So, you know, you
14 strictly have, if you strictly have a comedy
15 act and no music --

16 MR. ADAMS: That would be --

17 MEMBER ALBERTI: -- someone could
18 interpret Item 4 as requiring reimbursable
19 detail and I don't think that that's what you
20 mean.

21 MR. ADAMS: That is not.

22 MEMBER ALBERTI: I have to read

1 the, so I think we'll put this on the record
2 that it's, the intent here is live musical
3 entertainment.

4 MR. ADAMS: The District would
5 recognized that.

6 MEMBER ALBERTI: The Licensee?

7 MR. BLAKENEY: Yes.

8 MEMBER ALBERTI: Okay. It's just,
9 and maybe we could, before this gets in the
10 record, amend that --

11 CHAIR MILLER: Yes.

12 MEMBER ALBERTI: -- so for the
13 future we don't have any confusion. I don't
14 want to get you dinged for something you're
15 not --

16 MR. BLAKENEY: Understand.

17 MEMBER ALBERTI: -- violating.

18 CHAIR MILLER: Right. Okay, thank
19 you.

20 MEMBER ALBERTI: You're welcome.

21 CHAIR MILLER: Anything else?

22 Okay, so we have an Offer-In-Compromise to

1 consider and I just want to double check with
2 the Licensee.

3 Mr. Adams read this Offer-In-
4 Compromise into the record, I'm not going to
5 read the whole thing again, I don't know if
6 it's a good use of time. And it has your
7 signature on the OIC that was handed to the
8 Board, so I assume, so that means that you do
9 agree to this Offer-In-Compromise?

10 MR. BLAKENEY: Yes, I do.

11 CHAIR MILLER: Okay, and you
12 understand you waive your right to a hearing
13 and to appeal if you enter into a Offer-In-
14 Compromise?

15 MR. BLAKENEY: Yes.

16 CHAIR MILLER: Okay. All right,
17 if there are not any other comments or
18 questions I'm going to move to approve the
19 Offer-In-Compromise, do I have a second?

20 MEMBER SILVERSTEIN: Second.

21 CHAIR MILLER: Mr. Silverstein
22 seconded the motion, all those in favor say

1 aye?

2 (Chorus of ayes.)

3 CHAIR MILLER: All those opposed?

4 MEMBER ALBERTI: Opposed.

5 CHAIR MILLER: All those
6 abstaining? Okay, the motion passes then 3-1-
7 0 with Mr. Alberti opposed.

8 Okay, and as we discussed before
9 there was that one little amendment to the
10 Offer-In-Compromise.

11 MR. ADAMS: Yes, there was one
12 amendment in Section --

13 CHAIR MILLER: Do you all want to
14 --

15 MR. ADAMS: -- 4. It was add --

16 MR. BLAKENEY: Musical --

17 MR. ADAMS: Yes, it would be live
18 musical --

19 CHAIR MILLER: Musical
20 entertainment.

21 MR. ADAMS: -- and it would
22 eliminate the parenthetical, or musical

1 performance.

2 MEMBER ALBERTI: Right.

3 MR. ADAMS: So it's just for
4 clarity.

5 CHAIR MILLER: Right.

6 MR. ADAMS: Just eliminate that
7 whole parenthetical.

8 MEMBER ALBERTI: Yes.

9 CHAIR MILLER: Okay. I don't know
10 if you want to submit something to --

11 MR. ADAMS: Sure, I wrote that. I
12 can pass up what my added addition and it
13 might have to be --

14 MEMBER ALBERTI: Either you can
15 resubmit it or you can just both initial it.
16 Talk with our General Counsel --

17 MR. ADAMS: Certainly.

18 CHAIR MILLER: Yes.

19 MEMBER ALBERTI: -- and see what
20 she advises. You can do that afterwards.

21 MR. ADAMS: Okay, no problem.

22 MEMBER ALBERTI: It's on the

1 record.

2 CHAIR MILLER: Okay, great. Thank
3 you very much.

4 (Whereupon, the above-entitled
5 matter went off the record at 10:44 a.m.)
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